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DECISION



Woods

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

21474

FILE:

B-206616

DATE: April 12, 1982

MATTER OF:

Diversified Computer Consultants

DIGEST:

Late proposals sent by Special Delivery mail must be rejected as late even though postal clerk erroneously informed protester that certified or registered mail could not be sent to Army Post Office specified in RFP.

Diversified Computer Consultants (Diversified) protests the rejection of its late proposal under request for proposals (RFP) No. DAKF71-82-R-0005 issued by the United States Army Procurement Agency, Panama Canal Zone (Army). We conclude that the proposal was properly rejected as late and deny the protest.

By RFP No. DAKF71-82-R-0005, the Army sought to obtain prices for the purchase of certain data processing equipment and for the training of Army personnel in its use. Proposals were to be sent to the Army, Headquarters, 193d Infantry Brigade, Contracting Division, Army Post Office (APO), Miami, Florida 34002. The RFP stipulated that all proposals must be received by February 5, 1982, at 2 p.m. and contained the standard clause regarding late proposals as required by Defense Acquisition Regulation (DAR) § 7-2002.4 (Defense Acquisition Circular (DAC) No. 76-18, March 12, 1979). That provision read, in part:

"LATE PROPOSALS, MODIFICATIONS OF PROPOSALS
AND WITHDRAWALS OF PROPOSALS

"(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made; and

"(i) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers * * *."

This provision of the RFP does not require that proposals be sent by registered or certified mail. It only specifies the circumstances under which late proposals may be considered.

Apparently believing that the RFP required proposals to be sent via registered or certified mail, Diversified called the local post office for mailing instructions and was advised by a postal clerk that neither registered nor certified mail service was available to the APO address given. It was further advised to send its proposal by Special Delivery in order to assure delivery prior to the February 5 deadline. It was told that upon arrival at the Army Post Office in Miami, its proposal would receive special handling. On January 30, 1982, Diversified sent two copies of its proposal by separate Special Delivery mailings to the address specified in the RFP. Both copies of Diversified's proposal arrived on February 8, 1982. One had been postmarked January 30 and the other February 1.

DAR § 3-506(b) (DAC No. 76-20, September 17, 1979) provides, in part, that:

"[o]fferors are responsible for submitting proposals * * * so as to reach the designated Government office on time. Proposals and modifications of proposals received in the office designated in the request for proposals after the exact time specified are 'late' and shall be considered only if the circumstances outlined in (DAR) 7-2002.4 are applicable. * * *"

Because Diversified's proposal arrived in the designated office after 2 p.m. on February 5, the exact time specified in the RFP, it must be considered "late." Accordingly, it could have been considered only if the circumstances described in DAR § 7-2002.4 were applicable.

That regulation, as incorporated into the RFP, permits consideration of a late proposal only if it was received before an award is made and it was sent by registered or certified mail not later than 5 days prior to the time specified for receipt. Since Diversified's late proposal was not sent by either registered or certified mail, it does not come within DAR § 7-2002.4(a)(i) and, therefore, was not entitled to consideration.

Diversified argues that it made every possible effort to comply with the terms of the RFP and that the only reason its proposal was not sent by registered or certified mail was that it relied upon advice from the Postal Service that such service was unavailable. Specifically, it claims to have been told that certified mail is available only within the continental United States and that registered mail was unavailable because there would be no one at the APO in Miami who could acknowledge delivery by his signature.

The advice Diversified claims to have received was erroneous. The Domestic Mail Manual of the United States Postal Service provides for certified mail service in section 912. Section 912.42c provides specifically that certified mail may be addressed through Army post offices. In addition, section 912.42b provides that certified mail may be addressed for delivery in "the areas comprising the former Canal Zone." Registered mail service is covered in section 911 of the manual. Section 911.14, which specifies those circumstances in which registration is not available, contains no requirement, as a condition to registration, that a person authorized to sign for delivery be available at the address to which the article is to be mailed. Even though the information given Diversified by the Postal Service was erroneous, there is no exception available for considering a late proposal not sent by registered or certified mail. See also Health Management Systems, Inc., B-195438, November 23, 1979, 79-2 CPD 371.

This Office generally requests a report from the procuring agency upon receipt of a protest, 4 C.F.R. part 21 (1981), and withholds its decision pending receipt and review of the report. Where it is clear from a protester's submission, however, that the protest is without legal merit, the matter will be decided summarily. American Environmental Services, B-205590, December 23, 1981, 81-2 CPD 492.

B-206616

The protest is summarily denied.

for *Milton J. Douglas*
Comptroller General
of the United States